

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2005 OCT -4 AM 8:17

CLERK OF THE COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_

BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM,

Plaintiff,

-vs-

Case No. A-05-CA-181-SS

BENQ AMERICA CORP., et al.,  
Defendants.

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THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM,  
Plaintiff,

-vs-

Case No. A-05-CA-198-SS

ALCATEL, et al.,  
Defendants.

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BOARD OF REGENTS OF THE UNIVERSITY  
OF TEXAS SYSTEM,  
Plaintiff,

-vs-

Case No. A-05-CA-333-SS

MITSUBISHI ELECTRIC CORPORATION; et  
al.,  
Defendants.

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**ORDER**

BE IT REMEMBERED on the 30th day of September 2005, the Court called the above-styled cause for a scheduling conference and the parties appeared through counsel. The Court now confirms its oral announcements with the following written orders:

IT IS ORDERED that Defendants' Motions for a Limited Stay Pending a Decision on Defendant Motorola's Request for Reexamination [#58 in the 333 case; #99 in the 181 case; and #78 in the 198 case] are DENIED.

IT IS FURTHER ORDERED that each of the above-styled causes are hereby CONSOLIDATED for all purposes, and each will proceed henceforth as one action under cause number A-05-CA-181-SS.

IT IS FURTHER ORDERED that on or before December 1, 2005, the parties shall jointly: (1) meet and confer in an attempt to identify those claim terms in the patent-in-suit that will require construction by the Court; (2) file an agreed claim construction chart that identifies the claim terms on which there is no dispute among the parties and provides constructions of each agreed term for which a construction is deemed necessary; and (3) file a second claim construction chart that identifies each of the disputed claim terms along with the parties' proposed constructions of each term.

IT IS FURTHER ORDERED that on or before December 7, 2005, each side (Plaintiff on the one side and Defendants on the other) shall file opening claim construction briefs, which shall not exceed **twenty (20)** pages in length. To the extent there are claim construction issues on which certain of the individual Defendants take divergent positions, Defendants may seek leave of Court to exceed the page limits on their claim construction brief or to separately file short, supplemental briefs as necessary.

IT IS FURTHER ORDERED that on or before December 15, 2005, each side shall file response briefs on claim construction, which shall not exceed **ten (10)** pages in length.

IT IS FURTHER ORDERED that the *Markman* hearing in this case is set for **Thursday, January 5, 2006, at 9:00 a.m.** in the United States Courthouse, Courtroom 2, 200 West Eighth Street, Austin, Texas 78701, and will last no more than **four (4) hours**. Further, not less than **fourteen (14)** days prior to the hearing, counsel for the Plaintiff and counsel for Defendants shall meet, confer, and attempt to reduce the number of issues for the *Markman* hearing, and shall exchange any exhibits intended to be relied upon at the *Markman* hearing.

IT IS FURTHER ORDERED that the Court APPOINTS Mr. Karl Bayer as Special Master in the above-styled cause pursuant to FED. R. CIV. P. 53, upon consent of the parties. A copy of Mr. Bayer's *curriculum vitae* is attached to this Order. An investigation by the Court reveals Mr. Bayer has no conflicts of interest with the parties to the case or their counsel. The Court therefore finds Mr. Bayer is qualified to serve as a Special Master in this case. Interim compensation at the rate of \$250.00 (Two-hundred and fifty dollars) per hour shall be borne equally by the parties and is to be paid on a monthly basis. *See* FED. R. CIV. P. 53(a). The total amount of compensation shall be taxed as costs at the conclusion of this case.

Subject to further modification by the Court, the *Markman* hearing set for January 5, 2006 is referred to the Special Master. The Special Master is directed to conduct the hearing and to take other actions necessary to facilitate the filing of his Report under the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 53(c). The Report shall contain recommendations for claim constructions to be utilized in the trial of this case and shall be filed with a transcript of the proceedings and exhibits. *See* FED. R. CIV. P. 53(e). The parties

may file written objections to the recommendations made in the Special Master's Report within ten (10) days from the date of receipt of the Report. The Court will thereafter enter its own claim construction order.

The Clerk of the Court is directed to provide a copy of this Order to counsel for the parties and to Mr. Bayer. A copy of all pleadings henceforth filed by the parties with respect to the *Markman* hearing shall also be furnished to the Special Master at the following address:

Mr. Karl Bayer  
8911 N. Capital of Texas Highway  
Westech 2, Suite 2120  
Austin, Texas 78758  
Phone: 512-345-8537  
Fax: 512-345-9469

IT IS FURTHER ORDERED that the Court will enter a supplemental scheduling order that sets the trial date and other relevant dates after it enters its *Markman* order.

IT IS FINALLY ORDERED that no formal discovery may be taken in this case prior to the issuance of the *Markman* order, except as may relate to witnesses and exhibits to be presented at the *Markman* hearing itself.

SIGNED this the 3<sup>rd</sup> day of October 2005.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE



**KARL BAYER**  
Dispute Resolution Specialist

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8911 North Capital of Texas Highway Suite 2120 Austin, Texas 78759 (512) 345-8537 karl@karlbayer.com

**EDUCATION**

- 1998            **The University of Texas at Austin**, classes in microbiology and digital systems design
- 1976            **University of Texas School of Law**, J.D.
- 1973            **Massachusetts Institute of Technology**, M.S. (Biomedical Engineering)
- 1971            **Rice University**, B.A. *cum laude* (Electrical Engineering)

**EXPERIENCE**

- 1991-present    **Karl Bayer, Dispute Resolution Specialist**  
Solo practitioner of plaintiff's personal injury and intellectual property trial law and private mediator, arbitrator, educator, and facilitator in all areas of conflict, Austin, Texas  
  
*Special Patent Master in Crystal Semiconductor Corporation v. Opti, Inc. and Tritech Microelectronics International PTE Ltd.; Case No. A-97CA-026-SS; In the United States District Court, Western District of Texas, Austin Division (January 10, 1997). Reported at 246 F.3d 1336. Discovery and Pretrial Master in Western Aircraft, Inc. et al.v. Grupo Nacional Provincial, S.A. et al., Civil Action No. DR-97-CA-090, in the US District Court for the Western district of Texas, Del Rio Div.*
- 1997-1999      **Resolution Architects**  
Partner, Conflict resolution consulting on public policy, health care, technology and environmental issues, Austin, Texas
- 1989-1991      **Gibbins, Winckler & Bayer** - Partner, Austin, Texas
- 1988-1989      **Bickerstaff, Heath & Smiley** - Special Counsel, Austin, Texas
- 1988            **Texas Supreme Court Candidate** - Democratic Nominee for Place 5
- 1982-1988      **Pluymen & Bayer Attorneys** - Partner, Austin, Texas
- 1981-1982      **Brown, Maroney, Rose, Barber & Dye** - Associate Attorney, Environmental, Utility and Technology Section, Austin, Texas
- 1980-1981      **U. S. Environmental Protection Agency** - Staff Attorney, Office of General Counsel, Pesticides and Toxic Substances, Washington, D.C.
- 1979-1980      **U. S. House of Representatives** - Legislative Director for Representative Kent Hance
- 1977-1979      **Grambling, Mounce, Sims, Galatzan & Harris** - Associate Attorney, Business Litigation El Paso, Texas
- 1975-1976      **Omnibus** - Founding Partner, Automated school bus routing, Austin, Texas and Washington, D.C.
- 1974-1977      **Texas Senate** - Legislative and Administrative Assistant to Senator Don Adams, Austin, Texas
- 1973            **Concord Research Corporation** - Staff Engineer, Design of radar tracking systems and computer systems for school desegregation, Boston, Massachusetts

## PROFESSIONAL ACTIVITIES

2000-present Electronic Filing Committee, US District Court, Western District of Texas

1999 Magistrate Selection Committee, US District Court, Western District of Texas

1998 Panel Member: "Working with Lawyers at Mediation", Texas Association of Mediators Conference

1996-1999 Supreme Court Advisory Committee on Court-Annexed Mediation

1996 Lecturer: "Alternative Methods of Dispute Resolution", St. Mary's Law School -- Anáhuac University Law School, Mexico City, Mexico

1987-1996 Board of Directors, Legal Aid Society of Central Texas (President 1991)

1994-1995 Lecturer: "Alternative Methods of Dispute Resolution: Conciliation, Mediation and Arbitration," St. Mary's Law School -- University of Monterrey Law School Joint Venture, Monterrey, Mexico

1993 Lecturer: "Negotiations", St. Mary's Law School -- University of Monterrey Law School Joint Venture, Monterrey, Mexico

1987-1993 Instructor, "Winning at Trial", University of Texas School of Law

1991-1995 Guest lecturer on Professional Responsibility, University of Texas School of Law

1992 Member, Governor's Environmental Agency Transition Committee

1991-1992 President, Texas Consumer Association  
Member, Air Control Board Task Force on Compliance History

## PROFESSIONAL ASSOCIATIONS

**National:** American Arbitration Association; American Bar Association; Association of Attorney-Mediators; Institute of Electrical and Electronic Engineers; Association for Conflict Resolution

**State:** State Bar of Texas; Texas Bar Foundation; Texas Trial Lawyers Association, Texas Association of Mediators

**Regional:** Capital Area Trial Lawyers Association (President 1990-1991); Travis County Bar Association; Austin Association of Mediators

## PUBLICATIONS

2001 Author, "Domain Names: Understanding What's New, How to Protect Your Client's Presence", High-Tech Megacourse: the New High Tech Industry, The State Bar of Texas

Author, "Liability of Pharmacists," University of Houston Law Foundation Program on Medical Malpractice, Medical Device and Pharmaceutical Litigation

Author, "Getting and Protecting Electronic Information" South Texas College of Law Advanced Civil Trial Law Conference

- 2000 TILA Advanced Personal Injury Course: "Pre-Settlement Liens and Preserving Entitlement"
- Author, "State law Causes of Action in High-Tech Litigation" State Bar of Texas Advanced High-Tech Litigation Program
- 1998 Author, "Pharmacists' Liability: Analysis of the Development of a Duty to Warn", Medical Malpractice, Medical Device & Pharmaceutical Litigation Seminar, University of Houston Law Center
- 1997 Author, "ADR in Complex Medical Malpractice/Pharmaceutical/Medical Device Liability Litigation", Advanced Course Medical Malpractice, Pharmaceutical and Medical Device Litigation, State Bar of Texas, Santa Fe
- Author, "Ten Suggestions For Managed Care Law Suits," Dynamic Advocacy Seminar, Texas Trial Lawyers Association, Whitefish, Montana
- 1996 Author, "Opinion Evidence After *Daubert* and *Robinson*", Medicine for Lawyers Conference, The University of Texas School of Law
- 1995 Author, "ADR in the Medical Malpractice Context", Advanced Medical Malpractice Course, State Bar of Texas, Santa Fe
- Author, "New Relevancy and Admissibility Problems", University of Houston Law Center
- Author, "Case Law and Legislative Update on Punitive Damages", The University of Texas School of Law Products Liability and Personal Injury Conference
- 1994 Author, "ADR in Complex Medical/Pharmaceutical Liability Litigation", Advanced Course Medical Malpractice, Pharmaceutical and Medical Device Litigation, State Bar of Texas
- Author, "Car Wrecks and Drunk Drivers on the Information Superhighway", Dynamic Advocacy Seminar, Texas Trial Lawyers Association
- Author, "Common Relevancy Problems - Admissibility of Prior Occurrence Evidence after *Moriel*", Advanced Evidence and Discovery Institute, University of Houston Law Foundation
- Author, "Assessing and Evaluating the Malpractice Case: Plaintiff's View", Medical Malpractice Seminar, National Business Institute
- Author, "Environmental Cases: Sick Building Syndrome", Premises Liability Seminar, Texas Trial Lawyers Association
- Author, "Other Occurrence Evidence, Gross Negligence and Exemplary Damages, Post *Moriel*", The University of Texas School of Law Products Liability and Personal Injury Conference
- 1993 Author, "Domestic Torts", The Rutter Group-Texas Family Law Treatise
- Author, "Damages Update", UT Product Liability Conference, University of Texas School of Law
- Author, "Habit and Character Evidence", Advanced Evidence and Discovery Course, State Bar of Texas
- Author, "Torts", Advanced Family Law Drafting Course, State Bar of Texas
- Author, "ADR Update", Advanced Civil Trial Course, State Bar of Texas



- Author, "Duty or Damage?, Emotional Distress and Mental Anguish Following *Boyles v. Kerr* and *Twyman v. Twyman*", Butterworth's Texas Personal Injury Law Reporter
- Author, "Toxic Torts - Plaintiff's Perspective", South Texas School of Law Environmental Symposium
- 1992 Author, "Update on Architect and Engineer Liability", The University of Texas School of Law Construction Law Conference
- Author, "Professionalism", Advanced Personal Injury Law, State Bar of Texas
- Author, "Environmental Insurance Litigation", The University of Texas School of Law Product Liability and Personal Injury Conference
- Author, "Insurance Coverage in Toxic Torts", The University of Texas School of Law Product Liability and Personal Injury Conference
- 1991 Author, "Attorney Work-Product and Attorney-Client Privilege", Discovery in the New Age, Texas Trial Lawyers Association
- Author, "Current Developments in Deceptive Trade Practices", Advanced Personal Injury Law Conference, State Bar of Texas
- 1990 Author, "Medical Negligence", Advanced Practice Pointers and Trial Techniques, Texas Trial Lawyers Association
- 1989 Author, "Intentional and Negligent Infliction of Emotional Distress", Domestic Torts, South Texas College of Law
- Author, "Computers as a Tool of Presenting Information Persuasively", The University of Texas School of Law Product Liability and Personal Injury Conference
- 1988 Author, "Repeal of the Interspousal Immunity: Torts Come to Family Law", Marriage Dissolution Institute, State Bar of Texas
- Author, "Deceptive Trade Practices Act: A Primer", The University of Texas School of Law Product Liability and Personal Injury Conference
- 1987 Author, "Strategic Consideration in Selecting a Products Theory", The University of Texas School of Law Product Liability and Personal Injury Conference
- Author, "Toxic Tort Developments", American Conference on Chemical Labeling
- Author, "Trying Marital and Family Torts after *Price*", Family Law Seminar, The University of Texas School of Law
- 1986 Author, "Voi Dire in Product Liability Cases", The University of Texas School of Law Product Liability and Personal Injury Conference
- 1985 Executive Producer of 45 minute educational documentary sponsored by the Texas Bar Foundation entitled "The Earth, the Air, the Water, and ... the Law"
- "Governmental Regulation of Recombinant DNA Research and Manufacturing Processes" Comprehensive Biotechnology, Vol. 3, Chapter 63 (1985).

- 1983 Co-author of "Federal Regulation of Emerging Genetic Technologies", 36 Vanderbilt Law Review, 461 (1983)
- 1973 Author, "The Length and Organization of the Parallel Fibers of the Turtle Cerebellum", Masters Thesis, Massachusetts Institute of Technology. (1973)